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Supreme Court of the United States.

OCTOBER TERM, 1903.

No. 112.

THE WABASH RAILROAD COMPANY, PLAINTIFF IN ERROR,

vs.

WILLIAM N. PEARCE AND THE MISSISSIPPI VALLEY TRUST COMPANY, EXECUTORS OF CHARLES E. PEARCE, DECEASED.

IN ERROR TO THE ST. LOUIS COURT OF APPEALS OF THE STATE OF MISSOURI.

STATEMENT.

The plaintiff, Pearce, being the owner of four cases of curios which the Wabash Railroad Company refused to deliver to him, brought a replevin suit against the company in the Circuit Court, City

of St. Louis, to recover possession of the goods valued at $1,000.

The railroad company answered, setting up as an affirmative defense, that in the month of June, 1895, it received from the Chicago, Milwaukee & St. Paul Railway, at Given, Iowa, the four cases of curios in question; that as then and there represented to it by its connecting line, the charges then due upon said shipment amounted to $265.55, which sum was paid by the defendant in the usual course of business to the said Chicago, Milwaukee & St. Paul Railway; that after the institution of this suit, the defendant ascertained, for the first time, that said goods were imported into the United States by the plaintiff from a foreign country, to wit, Japan, and that said goods had been transported by the Canadian Pacific Railway from its western terminus, Vancouver, to Sault St. Marie in bond and there delivered to its connecting line, the Minneapolis, St. Paul & Sault St. Marie Railway for transportation to St. Paul, Minnesota; that at the latter place, the customs officers of the United States took possession of said goods, examined and appraised them and assessed the sum of $265.55 as custom duties due to the United States and a first lien upon the said goods; that said Minneapolis, St. Paul & Sault St. Marie Ry. paid the said duties "in order to get possession of said property so that it could be transported over its line of railway and its connecting lines to its final destination in the city of St. Louis, Missouri." That said duties so paid were collected by it as advance charges from its connecting line,

the Chicago, Milwaukee & St. Paul Railway, which, in its turn, duly transported said goods to the end of its line of railway, to wit, Given, Iowa, and there delivered the same to the defendant. The answer then charges: —

"That in so paying said duties as aforesaid, the said Chicago, Milwaukee & St. Paul Railway, and this defendant, each for itself, became and was subrogated to all the rights of the United States therein, and was and is thereby entitled to a first lien on said goods under the laws of the United States for the amount of said duties so paid by them severally as advance charges upon said property for and in behalf of the plaintiff. * * *

"Wherefore, defendant says that plaintiff is not entitled to have or maintain this action; and defendant further prays the court in this cause to enter a decree establishing said duties on said goods so paid by defendant as herein set forth for and on behalf of plaintiff as aforesaid as a first and paramount lien upon the property in controversy, and requiring plaintiff herein to pay said duties in full to the defendant before obtaining in this court a final order for the possession of the goods herein described." * * *

The reply alleges that on the 3d day of May, 1895, at the city of Yokohama, Japan, the Canadian Pacific Railway Company, a common carrier, received said four boxes of curios to be transported in bond to St. Louis, Missouri, a port of entry and delivery, and that plaintiff prepaid the freight charges

to St. Louis; that each of the four cases was plainly marked on the outside as shipped "in bond" to St. Louis, but that before their arrival in St. Louis and whilst in the custody of the Canadian Pacific Railway Co., and its connecting lines, the boxes were opened and a portion of their contents of the value of $350.00 was lost and destroyed.

The case was tried in the Circuit Court upon an agreed statement of facts and the plaintiff's testimony.

The agreed statement of facts admits:—

That the plaintiff is the owner of the goods, and that they were shipped from Yokohama in bond to St. Louis.

That the Canadian Pacific Railway for its own convenience, without notice to or the request of the plaintiff, or any of its connecting lines, changed the bonded destination of said goods from St. Louis, Missouri, to St. Paul, Minnesota.

That upon their arrival in St. Paul the customs officers of the United States took possession of the cases in question, opened and inspected them and assessed the duties thereon at $264.31, which sum was paid by the Minneapolis, St. Paul and Sault St. Marie Railway, and was placed upon the waybill by said railway as advance charges.

This suit was brought on the 25th of June, 1895. The Wabash Railroad Company did not pay the charges until the 29th day of July following and with full knowledge that they were the import

duties on the goods assessed and paid at St. Paul (see letter of Mr. George S. Grover, Rec., p. 31).

The Circuit Court found the issues for the plaintiff and gave him judgment for the possession of the goods. After an unsuccessful motion for new trial, the defendant appealed to the St. Louis Court of Appeals where the case was twice heard, resulting each time in an affirmance of the judgment below (Rec., p. 32). The opinion of the court is copied in the record, beginning on page 33, and is also reported in —

Pearce v. Wabash R. R. Co., 89 Mo. App. 437.

After the affirmance of the judgment in the Court of Appeals, the cause, upon petition of the Wabash Railroad Co., was removed by certiorari to the Supreme Court of Missouri. The Supreme Court, in its opinion, states: —

"The petition for the writ of certiorari was based upon the allegation that the St. Louis Court of Appeals had exceeded its jurisdiction or was without jurisdiction because 'the validity of a treaty or statute of or authority exercised under the United States is drawn in question' in the case of Pearce v. the railroad aforesaid, and that the defendant in that case had invoked and been denied the protection of such Federal statute or authority. And it was upon this showing and claim that the writ of certiorari was issued."

Upon the hearing, the plaintiff Pearce moved to quash the writ on the ground that no Federal right had been denied the relator. The court after a full examination of the record, took that view and quashed the writ.

State ex rel. v. Bland, 168 Mo. 1.

The Wabash R. R. Co. then sued out this writ of error.

POINTS AND AUTHORITIES.

I.

There is no Federal question in the case and the writ of error should be dismissed.

1. The question was adjudicated between the parties by the Supreme Court of Missouri.

State ex rel. v. Bland, 168 Mo. 1.

The Supreme Court of the United States is bound by the decision of the State court in regard to the meaning of the constitution and laws of its own State, and its decision upon such a state of facts raises no Federal question.

Turner v. Wilkes Cty. Coms., 173 U. S. 461–3;
Central Land Co. v. Laidley, 159 U. S. 103.

2. The supposed subrogation by virtue of which the Wabash Railroad Co. claims to withhold the plaintiff's property, does not arise under any statute of or authority exercised under the United States.

U. S. Rev. Stat., Sec. 709.

To give the Supreme Court of the United States jurisdiction over the judgment of a State court, it must appear that the decision of a Federal question presented to that court was necessary to the determination of the cause, and that it was actually decided, or that without deciding it, the judgment rendered could not have been given.

Brown v. Atwell's Adm., 92 U. S. 327;
Citizens' Bank v. The Board of Liquidation, 98 U. S. 140;
DeSaussure v. Gaillard, 127 U. S. l. c. 234;
Blount v. Walker, 134 U. S. 607–14;
Jersey City & B. R. R. v. Morgan, 160 U. S. 288;
Sawyer v. Piper, 189 U. S. 154.

Where the Supreme Court of a State decides a Federal question in rendering a judgment and also decides against the plaintiff in error on an independent ground not involving a Federal question and broad enough to maintain the judgment, the writ of error will be dismissed.

Hale *v.* Akers, 132 U. S., 554–64;
Murdock *v.* City of Memphis, 87 U. S. 590–634;
McManus *v.* Sullivan, 91 U. S. 578;
Capital Bank *v.* Cadiz Bank, 172 U. S. 425–30.

II.

St. Louis being a port of entry and delivery, the plaintiff was entitled under the laws of the United States to have his goods shipped and brought to St. Louis "in bond," and at St. Louis to make his "entry" for the purposes of customs payment. The goods having been delivered to and received by the Canadian Pacific Ry., for transportation "in bond" to St. Louis, it became the duty of the carrier to transport the goods "in bond" to St. Louis, and, if so transported, they were not subject to examination and customs assessment at any point other than St. Louis.

U. S. Rev. Stat., Sec. 3102; also Sec. 2994.

III.

The carrier had no right to change the contract destination of said goods, nor to change their consignment from Schade & Co., St. Louis, to F. Jones, St. Paul, nor to do otherwise than to carry said goods "in bond" to St. Louis.

Mellier *v.* St. Louis & N. O. T. Co., 14 Mo. App. 281–92.

IV.

The freight was prepaid to St. Louis. The carrier therefore has no freight lien on the goods. The money advanced in payment of the duties is no

part of the cost of transportation and the carrier acquired no lien on the goods by paying them.

Steamboat Va. v. Kraft, 25 Mo. 76–80;
Hutchinson on Carriers (2 Ed.), § 478.

V.

The railroad company was not subrogated to the government's lien for the import duties.

Aetna Ins. Co. v. Middleport, 124 U. S. 534–47;
Hinchman v. Morris, 29 W. Va. 673;
Griffing v. Pintard, 25 Miss. 173;
Wallace's Estate, 59 Pa. St. 401;
Mercantile Trust Co. v. Hart, 76 Fed. R. 673;
Milwaukee & M. R. Co. v. Soutter, 80 U. S. 517;
German Bank v. U. S. 148 U. S. 573–80;
Wilkinson v. Babbitt, 4 Dill. 207;
Sheldon on Subrogation, § 241, p. 361.

Taxes are not debts. A tax is an impost levied by authority of government upon its citizens for the support of the State.

Carondelet v. Picot, 38 Mo. 125;
Blevins v. Smith, 104 Mo., l. c. 595;
State ex rel. v. Snyder, 139 Mo., l. c. 553.

ARGUMENT.

I.

There is no Federal question in the case.

1. Sec. 12 of Art. VI. of the Constitution of Missouri, adopted in 1875, provides: "There is hereby established in the city of St. Louis an Appellate Court, to be known as the St. Louis Court of Appeals * * * Appeals shall lie from the decisions of the St. Louis Court of Appeals to the Supreme Court, and writs of error may issue from Supreme Court to said court in the following cases only: In all cases where the amount in dispute, exclusive of costs, exceeds the sum of two thousand five hundred dollars; in cases involving the construction of the Constitution of the United States or of this State; *in cases where the validity of a treaty or statute of or authority exercised under the United States is drawn in question;* * * *."

1 R. S. of Mo. 1899, p. 86.

Sec. 5 of the amendment to the above article, adopted in 1884, provides: —

"Sec. 5. In all causes or proceedings reviewable by the Supreme Court, writs of error shall run from

the Supreme Court directly to the Circuit Courts * * * and in all such causes or proceedings, appeals shall lie from such trial courts directly to the Supreme Court, and the Supreme Court shall have exclusive jurisdiction of such writs of error and appeals, and shall in all such cases, exclusively exercise superintending control over such trial courts."

1 R. S. of Mo. 1899, p. 93.

If, therefore, the case of Pearce v. The Wabash R. R. Co. involved a Federal question, it was reviewable by the Supreme Court of the State. Under the writ of certiorari issued upon the petition of the railroad company the cause was removed from the St. Louis Court of Appeals to the Supreme Court of Missouri. The latter examined the record, and held that no statute of or authority exercised under the United States is drawn in question in the case.

It therefore has been found and so adjudged between the parties, that there is no Federal question in this record.

State ex rel. v. Bland, 168 Mo. 1.

It may not be out of place to call attention to the fact that the St. Louis Court of Appeals, to which this writ of error is directed, is the court of final resort only in case no Federal question is involved in the cause. If, on the other hand, a Federal question is involved, then the Supreme Court, under the constitutional provisions above quoted, is the

highest court of the State in which a decision in the suit could be had.

U. S. Rev. Stat., Sec. 709.

2. It has never, for a moment, been questioned that the United States had a lien upon the four cases of curios for the import duties. But it is and always has been denied that the Wabash Railroad Co. was subrogated to that lien. For the purposes of this point, it is sufficient to know that no such right is conferred by a statute of the United States. If the right exists (which we deny) it is conferred by the general principles of equity jurisprudence and not by a Federal statute. There being no such statute, no Federal right has been passed upon or withheld in this case, and hence, there is nothing for this court to review.

If the plaintiff in error could point to a Federal statute subrogating the carrier to the government's lien upon payment of the import duties and could show that it had invoked the benefit of such statute in the court below and that the decision was in denial of the right claimed under the statute, it would present a case reviewable by this court. But as there is no such statute, and hence, no such right was or could be claimed in this case and no decision was or could be made thereon, the case is not within the scope or purview of Sec. 709 U. S. Rev. Stat.

The answer, it will be perceived, does not claim subrogation under any statute of the United States, but makes the claim under the general rules of equity, asking the court to enter a decree estab-

lishing said duties so paid by defendant as a first and paramount lien and requiring plaintiff to pay said duties *in full to the defendant* before obtaining a final order for the possession of the goods.

II.

If the case is to be considered upon its merits, I submit the following views: --

The agreed statement concedes that the plaintiff Pearce is the owner of the goods. He is therefore entitled to their possession unless the defendant is justified in withholding such possession by virtue of a valid lien.

As the freight was prepaid from Yokohama to St. Louis, and as the customs duties are no part of the cost of transportation, the defendant has and can have no freight lien on the goods. Its defense is that by paying the customs duties it became subrogated to the lien of the United States and by virtue of such lien is entitled to hold possession of the goods; and this is the sole question in the case so far as the merits are concerned.

An individual can never be subrogated to the remedies of the government for the enforcement of its laws. But aside from that consideration, and viewing the matter as between individuals, there can be no subrogation in this case for the following reasons: —

1. The railroad company was under no obligation whatever to pay the duties, nor did it pay them

to protect its own property interests. The payment was not made at the request of the owner of the goods; on the contrary, it was made without his knowledge and against his wish. The railroad company is therefore a mere volunteer and cannot claim subrogation.

Aetna Ins. Co. v. Middleport, 124 U. S. 534–47.

2. Import duties are not debts due by the owner, but taxes imposed upon the article itself. The statute says: "There shall be levied, collected and paid upon all articles * * * imported from foreign countries, the rates of duties which are by the schedules respectively prescribed."

U. S. Rev. St., Sec. 2503.

And a lien is given upon the article as the remedy for the enforcement of the tax. But when the duty is paid and the article passes out of the hands of the customs officers, *the lien is extinguished.* It has accomplished its purpose and given the government its due, which is its sole office.

3. It was the plaintiff's right to have the goods transported in bond from Yokohama to St. Louis without unpacking or repacking them. The statute provides that to avoid the inspection at the first port of arrival, the owner, agent, * * * may apply to any officer of the United States * * * to seal or close the same * * *; which officer shall seal or close the same accordingly; whereupon the same may proceed to their port of destination without

further inspection. Every such vessel, car * * * shall proceed without unnecessary delay to the port of its destination * * * and *be there inspected.*

U. S. Rev. Stat., Sec. 3102.

It also provides that merchandise transported in bond " shall not be unladen or trans-shipped between ports of first arrival and final destination * * * And in no case shall there be permitted any breaking of the original packages of such merchandise."

U. S. Rev. Stat., Sec. 2994.

The contract of the Canadian Pacific Ry. and its connecting lines was to carry the goods in bond from Yokohama to St. Louis. In diverting the bonded destination of the goods from St. Louis to St. Paul, the carrier was guilty of a wrongful act. It is claimed in the brief of the plaintiff in error that the railroad company paid the import duties to regain possession of the goods and complete their transportation to St. Louis. The goods were not subject to inspection at St. Paul. That they were so inspected was due to the tortious act of the carrier in diverting their bonded destination. It can gain no advantage from its own wrong, particularly as the plaintiff suffered serious loss as the result of that wrong. The goods were extremely delicate and brittle and required great care and skill in handling them. Having had them carefully packed in Japan, under his own supervision, Major Pearce availed himself of his right to have them shipped in

bond to St. Louis. The purpose of so shipping them was to avoid the danger of having the goods opened and unpacked whilst in transit. But in consequence of the carrier's wrongful act, the packages were opened and unpacked at St. Paul and evidently were negligently or unskillfully repacked, resulting in a loss to the plaintiff.

The doctrine of subrogation will not be applied to relieve a person fron loss occasioned by his own unlawful act.

German Bank v. U. S., 148 U. S. 573–80;
Milwaukee & M. R. Co. v. Soutter, 80 U. S. 517;
Wilkinson v. Babbitt, 4 Dill. 207.

4. The levying of taxes is an attribute of sovereignty. Its own demands having been satisfied, it is not consistent with the dignity or policy of the government to allow its remedies for the collection of revenue to be used by individuals to reimburse themselves. No one can be subrogated to the rights and remedies of the State.

Hinchman v. Morris, 29 W. Va. 673;
Griffing v. Pintard, 25 Miss. 173;
Wallace's Estate, 59 Pa. St. 401;
Mercantile Trust Co. v. Hart. 76 Fed. R. 673.

Respectfully submitted,

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